Supreme Court, U.S.
FILED

93 1355 FEB 14 1994

OFFICE OF THE CLERK

NO._____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

C R. CRISLER,
Petitioner,

v.

LINDA HERLOV FRANK, ET AL.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

C.R. Crisler
P. O. Box 292796
Nashville, TN 37229
615-885-9191

Attorney of Record

QUESTIONS PRESENTED

District of Columbia law firm, having entered into attorney-client relationship with an Arkansas citizen, committed unethical acts, acts of malpractice, and participated in scheme by which Petitioner was defrauded in violation of both state law the Communications Act. Firm subsequently misrepresented Arkansas contacts and committed litigation fraud by filing false affidavits in order to defeat jurisdiction.

Arkansas lawyers representing a defendant sued by Petitioner in District Court abused discovery rules and committed litigation fraud by filing false affidavits on behalf of their clients.

District Court dismissed on an exchange of affidavits, without a hearing or trial on issues of facts or law.

1. When there are conflicting statements about jurisdictional "contacts" or other issues of fact and law, may a court dismiss litigation solely on a "battle of affidavits," without discovery, hearing, trial, or offering a due process opportunity for cross-examination of the affidavits?

2. May an attorney be held civilly liable to a client or non-client for damages caused in abuse of administrative and/or judicial process?

3. Do state contacts which occur under a federal scheme independently enable personal jurisdiction in a district court?

4. Must there be a hearing or trial affording due process before a sanction is ordered under Rule 11 and before property is taken under Communications Law?

NAMES OF PARTIES

The names of the parties are stated in the caption. There are no known parent or subsidiary companies for any corporate parties to the controversy. Defendant Zane Grey Country, Inc. initially represented itself as corporation. Subsequent indicated that it was a partnership.

TABLE OF CONTENTS

Questions Presented	i.
Rule 29.1 Statement	ii.
Table of Authorities	iv.
Opinions Below	2.
Jurisdiction	3.
Statutes and Regulations Involved	4.
Statement of the Case	5.
History of Litigation	7.
Conclusion	12.
Reasons for Granting Writ	13.
1. To resolve conflicts between the States and circuits in matters of civil attorney accountability.	
2. To hold "boiler-room operators" jurisdictionally accountable under a federal scheme and clarify the standards for finding jurisdiction over such interstate operators under state "long arm statutes."	14.
3. To interpret and apply Constitutional due process to matters of civil forfeiture and Rule 11 sanction.	16.
Conclusion	18.

Appendix

1. Denial of Rehearing	A1
2. Opinion of Eighth Circuit	A2
3. Opinion of U.S. District Court	A 4
4. Opinion of District of Columbia Circuit	A9
Statutes and Constitutional Provisions	A11
1. Jurisdiction, Joinder, Due Process	A11
2. Review of FCC Orders	A13
3. Administrative Procedure Act	A18
4. Typical Long Arm Statute	A19
5. Constiutional Provisions	A20
6. Rules of Civil Procedure	A21

TABLE OF AUTHORITIES

Constitution of the United States of America
Amendments V,VII, VIII, XIV
(Reprinted at A20)

STATE STATUTES

Arkansas Long Arm Law
ACA §16-60-109

Arkansas and Arizona Uniform Corporation and
Partnership Codes

Arizona Statutes are Typical

§10-014(B), §10-105, §10-146, §29-104, §29-209, §29-215

FEDERAL STATUTES

Communications Act of 1934, As Amended
47 U.S.C. §401,402,411,503,504 (Reprinted at A13)

Administrative Procedure Act
5 U.S.C. §551 et.seq.(Reprinted at A18)

28 U.S.C., Federal Rules of Civil Procedure
Including Rules 4J,11,26,37,56(Reprinted at A21)

28 U.S.C. §1331, 1332, 1346, 1355, 1395
(Reprinted at A11)

CASES

Austin v. United States, 113 S.Ct. 2801 (1992).
F.A.R. Liquidating Corp. v. Brownell, 209 F.2d 375 (3rd Cir. 1954).

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 107 S.Ct. 107 (1987)

High Country Broadcasting Corporation, Inc. v. FCC, Case No. 89-1182 (Ct. App. D.C.Cir., June 9, 1989).

Kath v. Western Media, Inc., 684 P.2d 98 (Wyo. 1984)

Maritrans G.P. Inc. v Pepper, Hamilton & Scheetz, 529 Pa. 241, 602 A.2d 1277 (1992)

In Re Nu Corp. Energy Securities Litigation, M.D.L. No. 514 (S.D. Cal. 1989)

Pleasant Broadcasting v. FCC, 564 F.2d 469, 500-02, (Ct. App. D.C. Cir., 1977).

RT Leasing Corp. v. Ethyl Corp., 494 F.Supp. 1128, S.D. N.Y., 1980).

Redman v. Warrener, 516 F.2d 766, 768 (1st Cir. 1975)

WSPIE v. Fisons Corp., 122 Wn. 2d 299, 858 P.2d 1054 (1993)

OTHER AUTHORITY

Rules and Code of Professional Conduct, Supreme Court of Arizona, Rules E.R. 1.4, 1.7, 1.8, 1.16(5) (Comparable rules in effect in Arkansas, Virginia & District of Columbia. Model Rules of Professional Conduct 3.3(a)(2) and (4) (duty of candor to the tribunal trumps Model Rule 1.6 duty of confidentiality toward the client).

Formal Opinion 93-376, Standing Committee on Ethics and Professional Responsibility, August 6, 1993; also Virginia State Bar Opinion 1451 (1992); Michigan State Bar Opinion RI-151 (1992),

BRIEF FILED BELOW

Incorporated are the citations noted below in Appellant's Revised Brief, Eighth Circuit Case No. 93-1357, C.R. Crisler, et al. v. Linda Herlov Frank, et al.

NO._____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

C.R. CRISLER, Petitioner,

v.

LINDA HERLOV FRANK, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI

Petitioner prays that a writ of certiorari issue to review improper dismissal of his litigation in the face of conflicting jurisdictional affidavits. No hearing or trial was held, in violation of both the Communications Act and the Administrative Procedure Act. Disputed issues of fact and law include civil liability attaching to attorneys for malpractice and abuse of process, and whether attorneys operating under a federal scheme may defeat jurisdiction.

OPINIONS BELOW

1. The Order of the United States Court of Appeals for the Eighth Circuit denying rehearing on November 16, 1993 is reprinted at A1.

2. The unpublished Opinion of the United States Court of Appeals for the Eighth Circuit, filed October 20, 1993, is reprinted at A2.

2. Orders of the United States District Court for the Western District of Arkansas are reprinted at A4-A7.

3. The relevant Opinion of the United States Court of Appeals for the District of Columbia Circuit is reprinted at A9.

4. Relevant Constitutional, Statutory, and Regulatory Provisions are reprinted verbatim at A11.

JURISDICTION

Judicial review was sought in District Court was claimed on the basis of the Communications Act, the Administrative Procedure Act, and as a esult of diversity of citizenship and federal question provisions of the Federal Rules. District Court summarily dismissed the complaint, without discovery, hearing, or trial, as a results of an assumption, in the face of conflicting affidavits to the contrary, that personal jurisdiction was lacking and/or that attorneys could not be sued for litigation fraud and abuse of administrative and judicial process.

The unpublished decision of the Eighth Circuit United States Court of Appeals was filed October 20, 1993. A motion for rehearing was denied November 16, 1993. Jurisdiction of the Supreme Court for review of this matter is invoked pursuant to 28 U.S. C. §1254.

A relevant decision, attached hereto, was also rendered by the United States Court of Appeals for the District of Columbia Circuit on June 9, 1989, which stated that a trial de-novo was mandatory in order to resolve all issues of disputed fact and law. Taken together, the orders of the Eighth and District of Columbia Circuits appear constitute a conflict in circuits.

STATUTES AND REGULATIONS MOST SPECIFICALLY INVOLVED

5 U.S.C. §511, §552, §554, §702, §704, §706

28 U.S.C. Rules 4,11,26,37,56 Fed. R. Civ. P.

28 U.S.C. §1331,1332,1346,1355,1395

47 U.S.C. §401, §402, §411, §503, §504

Arkansas Long Arm Statute
ACA §16-60-109

STATEMENT OF THE CASE

I. Introduction

Attorneys committed litigation fraud in connection with a 1989 lawsuit arising under the Communications Act. In the earlier suit, plaintiffs complained that they were denied the judicial review of a decision of the Federal Communications Commission promised by both the Communications Act and the Administrative Procedure Act.

The present appeal raises questions of whether a "battle of affidavits" constitutes sufficient due process under which to dispose of disputed issues of fact and law, when both the Communications Act and the Administrative Procedure Act, taken together, require both an administrative hearing and a trial de novo, neither of which ever took place.

The controversy also raises the question of the basis upon which attorneys may be held civilly liable for abuse of administrative and judicial process, both to clients and non-clients. The decision below is in conflict with other precedent, including the supreme courts of one or more states, which clearly state that civil liability may attach.

II. Factual Background

Petitioner was an Arkansas citizen who was defrauded in connection with the proposed sale of his Arizona radio broadcast station. A Washington law firm accepted $2,000.00 of Petitioner's funds while aiding the fraud scheme and violating the Communications Act. The firm also failed to disclose to Petitioner prohibited conflicts of interests, and failed in its duty of candor to District Court to disclose substantial business contacts.

Petitioner alleges that privity of contract existed as between himself the Washington, D.C. attorneys, and even if it did not, the firm had sufficient federal and state contacts such as to enable the court to find jurisdiction. Petitioner further argued that jurisdiction was proper both under the Arkansas "Long Arm Statute" and under the jurisdictional and joinder provisions of federal law.

District Court could not competently have made any decision on disputed issues of fact and law without some form of discovery, cross-examination of affiant, holding a hearing, or conducting a trial on the disputed issues of fact and law. Summary judgement was not proper.

The regulatory scheme controlling broadcast stations delegates authority to the Federal Communications Commission (FCC), with staff primarily domiciled in Washington, D.C. Pendant state law claims arose from the same nucleus of fact giving rise to federal jurisdiction.

The four Arizona residents named in the complaints below were first thought to be organized as an Arizona corporation. Their "president," Linda Herlov Frank, filed an affidavit stating no Arkansas contacts. This was despite the fact that she had in fact traveled to Arkansas, and done business in Arkansas for several years.

As a result of the improprieties engaged in by the proposed buyers and the Washington law firm, Petitioner's radio station and personal property were for a time seized by the government. The contract of proposed sale collapsed, the business ceased as a viable entity, and other significant economic harm was created to Petitioner. Petitioner sought judicial review promised under both the Administrative Procedure Act and the Communications Act, the due process required for forfeiture of property under the Constitution and the various applicable statutes, and to apportion to the culpable parties the civil liability for economic damages caused to him.

II. History of Litigation

1) THE WASHINGTON LAWYERS Litigation was twice brought by Petitioner in his home district against Kathryn Schmeltzer, and once against her law firm and other culpable parties. Selection of forum was in accord with all relevant statutory authority, as well is in complicity with the instructions of the United States Court of Appeals for the District of Columbia Circuit reprinted herein at A9.

The Court of Appeals, cited the Communications Act in requiring due process through at minimum an administrative hearing, and based upon the facts of this case, a trial de-novo. Also applicable is the Administrative Procedure Act, since review of a decision of the Federal Communications Commission is at issue.

Petitioner had every expectation that there would be at least a minimal level of due process afforded. However, defendants raised attorney immunity and/or lack of Arkansas contacts as a defense to suit against them. Questionable affidavits were filed by the defendants in bad faith, violating the Federal Rules of Civil Procedure at Rule 56. District Court conducted no due process inquiry into the affidavits.

The Washington attorneys were show to be engaging in a "boiler-room" practice of law under the Communications Act, wherein they had contacts with all states in interstate commerce, but seldom engaged in the more traditional "face-to-face" contacts with clients. The firm had clients in Arkansas, and had done previous business with Petitioner in Arkansas. At the same time it became involved with Petitioners radio station, the same law firm was also on retainer from a competing radio station which was covertly opposing the sale at the FCC. The attorneys failed in their duty of disclosure (See Formal Opinion 93-376, Standing Committee on Ethics and Professional Responsibility, August 6, 1993; also Virginia State Bar Opinion 1451 (1992); Michigan State Bar Opinion RI-151 (1992), Maritrans G.P. Inc. v Pepper, Hamilton & Scheetz, 529 Pa. 241, 602 A.2d 1277 (1992); WSPIE v. Fisons Corp., 122 Wn. 2d 299, 858 P.2d 1054 (1993). The confusion engendered by the attorney misconduct led to heightened FCC scrutiny, a significant administrative delay, and ultimately the ruination of Petitioner's business. Meantime, the defendants walked away.

In District Court, Petitioner made a good faith showing that Arkansas contacts did exist, even though independent federal jurisdiction was proper even had there been an absence of state contacts. Petitioner even showed that there was an attorney-client relationship, which should have been evidence enough of sufficient contacts. At least $2,000.00 of his funds were accepted by the Washington law firm. He finally showed in the courts below that civil liability should have attached to the defendant attorneys, and more than adequately briefed the issue in the Eighth Circuit Court of Appeals.

Despite this, Petitioner was sanctioned under the older version of Rule 11 on the issue of jurisdiction, and the sanction was not disturbed by the Eighth Circuit. Again, there was no hearing or trial whatsoever dealing with the issues of jurisdiction and attorney misconduct. Even though there have been amendments to Rule 11 which would have precluded the misuse of sanctions against the Petitioner, the rule change has not been applied to this case. However, under neither version of Rule 11 should sanctions have been applied for stating a well-reasoned and well-grounded statement of the facts and law, especially when no due process was afforded, and even more particularly so when statements made by the movant in order to bring the sanction were fraudulent and not supported by any competent and compelling evidence.

2) THE ARIZONA DEFENDANTS Despite Arkansas "long-arm" jurisdiction first having been found by the same District Court over two of the Arizona "partners" in 1989, none was found over the other two "partners." This was despite the "president" having travelled to Arkansas on the behalf of the "corporation," that the partners had been in commerce with Arkansas over a significant period of time, were all jointly and severally liable, and that joint and several liability and personal service over all of the partners would have been proper under Arizona law A.S. §10-014(B), §10-105, §10-146, §29-104, §29-209, §29-215.

Once again, process was abused in District Court when defendants filed misleading affidavits solely to defeat jurisdiction. Again, the District Judge offered no opportunity to impeach the affidavits, and no inquiry was made by the court as to the sufficiency of contacts under the federal scheme.

Ample precedent exists under which these defendants have been found civilly liable for the kinds of illegal, unethical, and tortious acts committed during the course of their dealings with Petitioner under a federal scheme. Prejudicial error occurred when District Court failed to conduct a hearing on the issue of jurisdictional contacts. This error is reason enough to resubmit the facts and legal issues to the court below.

3) ARKANSAS LAWYERS Litigation was brought in the Western District of Arkansas, at the time the jurisdiction in which the plaintiff resided. This choice of venue was suggested, if not mandated, by the language of the earlier decision of the United States Court of Appeals for the District of Columbia Circuit which is cited at A8.

Jurisdiction was first found to be proper over Robert and Ivy Wills. The Wills' employed Curtis Hogue as their Arkansas attorney.

While no attorney-client relationship existed as between his firm and Petitioner, civil liability can attach to a non-client for tortious activities, such as abuse of process Brief of Appellant, Eighth Circuit, this case.

Such abuse of process did occur. Attorney Hogue failed to disclose "smoking gun" documents, failed to update discovery, and failed to abide by the Federal Rules of Civil Procedure 28 U.S.C. at Rules 11, 27, 37. 56. He abrogated his duties of disclosure under the Code of Professional Responsibility and is civilly liable for the results Kath v. Western Media, Inc., 684 P.2d 98 (Wyo. 1984); In Re Nu Corp. Energy Securities Litigation, M.D.L. No. 514 (S.D. Cal. 1989), and brief below. As a result, complaints were lodged against the Arkansas attorneys, and should have been heard by District Court.

Attorney Hogue denied the existence of a critical "promissory note" and other "smoking gun documents." Hogue further did not disclose, to the Court, as he should have done under the Federal Rules, the existence of other relevant litigation his clients had been engaged in before another jurisdiction.

Based upon precedent in the Eighth Circuit, the Arkansas attorneys should have been brought to trial on the issue of civil liable to Petitioner for abuse of judicial process. It was error for District Court to summarily dismiss without inquiry into the issue of attorney civil liability.

CONCLUSION

Attorney Schmeltzer and her law firm purposefully availed themselves of benefits arising from Arkansas when they practiced administrative law under a Communications Act scheme. In the process, the lawyers accepted at least $2,000.00 in Arkansas funds from Petitioner, establishing an attorney-client relationship. In the process of the relationship they committed unethical and illegal acts. These undisputed facts are alone sufficient to enable jurisdiction under both the federal scheme and a state "long-arm statute."

It is further argued that the outcome of the litigation below would have been different had certain defendants not, through Arkansas attorneys, filed false jurisdictional affidavits and/or unlawfully withheld "smoking gun" documents from the Court. Ordinarily, in the face of such litigation fraud, District Courts have the duty to assess sanctions, up to and including directing a verdict against the offending parties. In this case, however, District Court did nothing, and did not even hold a hearing.

The defendant attorneys in this litigation have crossed the line separating zealous representation of their own self-interests and the interests of their clients from the prohibited territory of abuse of judicial process. They must be held civilly liable for the results.

The Courts below conducted no hearings on the issues of jurisdiction or attorney misconduct. No due process was provided for cross-examination or impeachment of affidavits. Petitioners argue that the proper standards for dismissal were not met, nor was there adequate due process afforded when a Rule 11 sanction was imposed.

The decision below is at odds with precedent both in the Eighth and other circuits. The effect of the decision is to make attorney malpractice and abuse of process immune from accountability.

REASONS FOR GRANTING WRIT

1. To Resolve Conflicts Betewen the States and Circuits as to Attorney Liability for Misconduct and Abuse of Process.

Attorney misconduct is a significant issue in this litigation, as was the participation of the defendants in conduct violative of the Communications Act. At least one state's supreme court (Washington), has recently decided that a controversy such as the instant one was not only justiciable, but meritorious.

The misconduct of attorneys caused both civil forfeiture penalties and Rule 11 sanctions to be imposed against an innocent victim. The highest level of due process scrutiny under the protection of the Constitution should have been invoked. Yet, the unpublished Eighth Circuit opinion below left undisturbed an District Court decision that offered no due process whatsoever.

A Washington law firm committed malpractice and abused of process in connection with its "boiler-room practice" of communications law in interstate commerce. Arkansas law firms caused abuse of process to occur in a communications law matter when they overzealously represented their clients in filing questionable affidavits and violated Federal Rules of Civil Procedure by withholding evidentiary materials.

The District of Columbia Circuit interprets Communications Law as requiring trial de-novo in a matter where there are disputed issues of fact and law High Country Broadcasting Corporation v. FCC, CA 89-1182 (Ct. App. D.C. Cir., June 9, 1989) citing Pleasant Broadcasting v. FCC, 564 F.2d 469, 500-02 (Ct. App. D.C. Cir. 1977) and 47 U.S.C. §503(B)(3)(b), §504(a). The Administrative Procedure Act also makes judicial review available. Most of the circuits clearly hold that disputed issues may not be disposed of on a "battle of affidavits." The Eighth Circuit position established in this case is clearly conflicting.

2. **To Hold "Boiler-Room Operators" Jurisdictionally Accountable Under a Federal Scheme, and to Clarify the Standards for Finding Jurisdiction Over Interstate Operators Under State "Long Arm Statutes."**

Petitioners complain that both state law and Communications law was violated by the actions of the defendants named in the litigation filed in the Western District of Arkansas. Petitioner had to bring the litigation because the government refused to do so.

Defendants in the litigation below included an attorney who is reportedly a resident of Virginia, and who practices "boiler-room" administrative law before the Federal Communications Commission in Washington, D.C. The attorney practices with a medium-sized firm. They admittedly accept clients from all over the United States and take their funds, but when something goes wrong with their representation of one of those clients, the attorneys claim they have no "contacts" anyplace other than the District of Columbia.

Long Arm Statutes typically, as in the case of Arkansas, show that the intent of the states is to hold "Any person, whether or not a citizen or resident of this state...[responsible]...as to any cause of action arising from the doing of such acts [as]: 1) The transaction of any business within the State; 2) The commission of a tortious act within the State...

The typical legal defense of a "boiler-room" operator whose finger is caught in the cookie jar is to claim lack of state contacts as a defense to jurisdiction. An attorney typically may also claim lack of contractual privity.

Even if these defenses were applicable to the defendants to this litigation, which they clearly are not, the Communications Act scheme under which the complained of conduct arose imposes other requirements which defeat such defenses.

In view of modern business practices wherein contacts along the "information highway," have replaced traditional "face to face" contacts, public policy also requires that some means be found to hold "boiler-room" operators accountable in any and all jurisdictions in which they avail themselves of a livelihood.

Kathryn Schmeltzer accepted at least $2,000.00 in legal fees from Petitioner, and was at least arguably in contractual privity with him. Since the funds arose from Arkansas, she was in contact with the state. That is all that should have been required for the jurisdiction of an Arkansas court.

In addition, she and her firm committed tortious acts. These included failing to disclose prohibited conflicts of interest, filing of false and misleading documents with both the Federal Communications Commission and the judiciary, and assisting a radio station employee in an embezzlement scheme.

Pendant state claims arose from the common nucleus of fact with the federal communications law question. District Court jurisdiction should have been automatic, and certainly should have not been denied without a due process.

3. **To Interpret and Apply Constitutionally-Mandated Due Process Requirements to Matters Involving Summary Judgement, Civil Forfeiture and Sanction.**

In the greatest part as a result of the misconduct of the Washington D.C. attorneys, and the four Arizona "partners," Petitioner's radio station and personal property was seized by the government, and eventually a civil forfeiture was proposed. A sanction resulted under a now obsolete version of Rule 11, and another civil forfeiture has been proposed for alleged violations of Communications law. Yet, Petitioner has endured the punishments even though he knew nothing of the misrepresentations at the time they were made.

These deprivations constitute takings of personal property, and require due process, even if the taking is of a definite duration First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 107 S.Ct. 107 (1987), Austin v. United States, 113 S.Ct. 2801 (1992). The authority for due process and jury trial most directly lie in Amendments Five, Seven, Eight, and Fourteen of that Constitution, which prohibit forfeitures, excessive fines, or dispossession of guaranteed citizenship rights. Due process imposes a trial requirement when these amendments are taken together.

Finally, both the Administrative Procedure Act at 5 U.S.C. §702, and the Communications Act at 47 U.S.C. §504 entitle Petitioner to a right of judicial review. The Court of Appeals for the District of Columbia has, on these facts, specifically stated that there must be a trial de-novo as to "all" disputed issues of facts and law.

Because of attorney misconduct, Petitioner was denied an opportunity to see all of the issues of disputed fact and law exposed to the due process scrutiny of discovery, cross-examination of evidence under the Rules of Evidence, a hearing, and/or a trial. He was denied the opportunity to join culpable parties as authorized by Communications law in 47 U.S.C. §411 in a trial de-novo as required under 47 U.S.C.§504. Instead, his case was disposed of in District Court in a "battle of affidavits."

Especially in such a case as this, wherein Communications Law provisions were purportedly violated, it is particularly inappropriate to decide issues of fact and law on unverified affidavits. Precedent holds specifically against "trial by affidavit" in such situations Redman v. Warrener, 516 F.2d 766 (1st Cir., 1975); R-T Leasing Corporation v. Ethyl Corporation, 494 F.Supp. 1128 (S.D.N.Y. 1980); F.A.R. Liquidating Corp. v. Brownell, 209 F.2d 375 (3rd Cir. 1954). Petitioner submits that a most significant reason for a grant of review under this Petition would be to afford and implement due process.

CONCLUSION

The Court should grant the defendant's Petition for Certiorari, and after appropriate review, remand the underlying issues of fact and law for trial in a lower court of competent jurisdiction.

The Court should provide interpretational instructions as to attorney civil liability for abuse of process to both clients and non-clients, and further define the relationships between state "long arm statutes" and "boiler-room operators" whose non-traditional contacts may be both with federal schemes practiced regionally and nationwide, as well as with the individual states.

Petitioners further pray that this Court shall grant this Petition for Certiorari in order to grant justice in a matter which under civil forfeiture statues is capable of repetition yet somehow has managed thus far to escape either administrative or judicial review.

Petitioner finally notes that the District Court below has far departed from the accepted and usual course of judicial proceedings in several ways, and that in the area of civil attorney liability there are conflicts between the states and circuits which require resolution and an exercise of this Court's power of supervision.

Respectfully submitted,

C.R. Crisler
Post Office Box 292796
Nashville, Tennessee 37229-2796

Attorney at Law
Supreme Court Bar Admission Pending

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 93-1357WAF

C.R.Crisler, etc., Appellant

vs.

Linda Herlov Frank; et al.,
Appellees.

The petition for rehearing by the panel is denied.

November 16, 1993

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

C.R.Crisler, doing business as KKJJ Radio Station, Individually, and as a Successor to High Country Broadcasting Corporation, Inc.,

Appellant,

v.

Appeal from the U.S. District Court for the Western District of Arkansas

Linda Herlov Frank; William Frank; Curtis E. Hogue; Kincaid, Horne, Trumbo & Hogue Law Firm; Fisher, Wayland, Cooper & Leader Law Firm; Kathryn Schmeltzer; Robert G. Wills; Ivy J. Wills; Zane Grey Country, an Arizona Partnership or alternatively a defective Arizona Corporation,

Appellees.

[Unpublished]
No. 93-1357

Submitted: September 17, 1993
Filed: October 20, 1993

Before Magill and Hansen, Circuit Judges, and Hamilton*, District Judge.

PER CURIAM.

*THE HONORABLE JEAN C. HAMILTON, United States District Judge for the Eastern District of Missouri, sitting by designation.

Crisler appeals pro se from several district court[1] orders. The district court granted summary judgement for defendants Curtis E. Hogue and the law firm of Kincaid, Horne, Trumbo & Hogue'; dismissed defendants Kathryn Schmeltzer and the law firm of Fisher, Wayland, Cooper & Leader for lack of personal jurisdiction; dismissed defendants Robert and Ivy Wills and Zane Grey Country, Inc., for insufficiency of process; and imposed Rule 11 sanctions on Crisler. After carefully reviewing the briefs and the record in this case, we conclude that the district court committed no error. An opinion would have no precedential value.

Accordingly, we affirm the district court in all respects without opinion. See 8th Cir. R. 47B.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit

---

[1]The Honorable H. Franklin Waters, Chief Judge, United States District Court for the Western District of Arkansas.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

C.R.CRISLER, INDIVIDUALLY AND AS A SUCCESSOR TO HIGH COUNTRY BROADCASTING CORPORATION, INC., d/b/a KKJJ RADIO STATION,
PLAINTIFFS,

V. Civil No. 92-5016

LINDA HERLOV FRANK, WILLIAM FRANK, CURTIS E. HOGUE, THE LAW FIRM OF KINCAID, HORNE, TRUMBO & HOGUE, THE LAW FIRM OF FISHER, WAYLAND, COOPER & LEADER, KATHRYN SCHMELTZER, THE UNITED STATES OF AMERICA, ROBERT G. WILLS, IVY J. WILLS, ZANE GREY COUNTRY, AN ARIZONA PARTNERSHIP OR ALTERNATIVELY A DEFECTIVE ARIZONA CORPORATION,
DEFENDANTS.

ORDER

On this 19th day of August, 1992, upon consideration of the motions pending in the above captioned case, the court finds for the reasons set forth in a letter to the parties of even date as follows:

1. The motion to dismiss filed on behalf of Robert G. Wills, Ivy J. Wills, and Zane Grey Country is granted.

2. The motion to dismiss filed on behalf of Kathryn Schmeltzer and the law firm of Fisher, Wayland, Cooper & Leader is granted.

3. The motion for sanctions filed on behalf of Kathryn Schmeltzer and the law firm of Fisher, Wayland, Cooper & Leader is granted. Plaintiff, C.R. Crisler is directed to pay the penal sum of $1,500.00 to Kathryn Schmeltzer and the law firm of Fisher, Wayland, Cooper & Leader as a penal sanction pursuant to Rule 11 of the Federal Rules of Civil Procedure.

4. The plaintiff's motion to strike is denied.

5. The motion for reconsideration of the June 22, 1992, order is denied.

6. The plaintiff's motion for Rule 11 sanctions against Barry H. Gottfried is denied.

7. Plaintiffs motion for judgement by default is denied.

IT IS SO ORDERED

H. FRANKLIN WATERS
United States District Judge

Filed August 19, 1992
Chris R. Johnson, Clerk
by Deputy Clerk

ORDER

On this 3rd day of September, 1992, came on for consideration the motion for reconsideration filed by the plaintiff and the response thereto. The plaintiff has moved for reconsideration of each of the seven motions ruled on by the court on August 19, 1992.

Prior to the court's initial ruling on the motions, all submissions with respect to each motion were carefully considered. In the current motion for reconsideration Mr. Crisler by in large merely argues that the court was wrong. In particular Mr. Crisler contends the court failed to properly consider the evidence, was influenced by other proceedings that have nothing to do with this case, and that the court was deliberately lied to by various of the defendants.

The court does not expect litigants to agree with every ruling of the court. Normally every court ruling results in one side losing on an issue and the other side prevailing. The losing party has the option to appeal the ruling of the court provided such ruling amounts to a final appealable order.

With regard to the dismissal of Ivy Wills, Robert Wills, and Zane Grey Country, the plaintiff contends the time allowed by the rules for service of process has not yet expired. If the time allowed for obtaining service has not yet expired, plaintiff may, of course, attempt to obtain service on these defendants. The court's prior ruling merely found that service had not been properly made on these defendants.

Plaintiff also requests leave to move for a second reconsideration of the court's dismissal of Linda Herlov and William Franks. The court has already ruled on one motion for reconsideration in connection with these defendants. Resubmission of the same record would not alter the court's prior ruling.

Accordingly, the motion for reconsideration is denied. Plaintiff is further advised that the court will not tolerate improper conduct. The plaintiff is free to disagree with the rulings of the court and may, as noted previously, appeal the rulings of the court.

IT IS SO ORDERED
FILED SEPT 03, 1992

H FRANKLIN WATERS
United States District Judge

ORDER

On this 13th day of November, 1992, came on for consideration the motion to dismiss filed October 8, 1992, on behalf of Robert J. Wills, Ivy J. Wills, and Zane Grey Country. On August 19, 1992, by letter opinion and order the court the court [sic] granted a motion to dismiss filed on behalf of these same defendants on the grounds that service of process was insufficient. On October 1, 1992, the plaintiff filed a motion for enlargement of the time limit for service. The motion recited that "actual service was perfected on September 22, 1992." As plaintiff stated services was already perfected the court denied the motion. The court made no ruling regarding the timeliness of the service or whether service was proper.

On October 8, 19092, the defendants filed the instant motion to dismiss. On October 30, 1992, the plaintiff filed a motion for enlargement of time for opposition to the motion. Plaintiff attached as an exhibit the response he wished to file. An order was entered granting the an [sic] extension of time to respond until November 6, 1992. Plaintiff did not file his response. However, the court has read and considered the attachment to the motion for enlargement of time.

The service of the summons and complaint was not timely under rule 4j. Fed.R.Civ.P. 4(j). No extension of time to serve was made prior to the expiration of the time allowed by rule 4(j). Plaintiff has not shown good cause for an extension of time. See generally, 4A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §1137 (2d Ed. 1987). Accordingly, the motion to dismiss filed on behalf of Robert G. Wills, Ivy J. Wills, and Zane Grey Country is granted. The case as against those defendants is dismissed.

IT IS SO ORDERED — H. FRANKLIN WATERS
FILED NOV 17, 1992 — United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
NO. 89-1182
SEPTEMBER TERM 1988

Filed June 9, 1989

Before: Mikva, Edwards, and Williams, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the opposition thereto, the reply and the motion to defer filing of certified index, it is

Ordered that the motion to dismiss be granted. Because the agency imposed the forfeiture according to the abbreviated proceeding described in 47 U.S.C. §503(b)(4), any suit involving recovery of the forfeiture is subject to trial de-novo in the district court. See 47 U.S.C. §§503(b)(3)(b), 504(a). Such actions are brought by the United States Attorneys to prosecute for recovery of forfeitures. However, if the government delays in bringing the collection action in district court, presumably appellant could bring a declaratory judgement action against the United States in district court. In this proceeding, "all the issues of fact and law presented by the licensee would be subject to the trial de-novo procedure set forth in section 504(a)." Pleasant Broadcasting Company v. FCC, 564 F.2d 496, 500-02 (D.C. Cir. 1977). Although this action should be litigated in the first instance, we decline to sua sponte transfer this case under 28 U.S.C. §1631, as a transfer does not appear to be in the interests of justice.

We take this opportunity, however, to remind the parties to address the question whether transferring a case under section 1631 is appropriate when moving to dismiss on the ground that the case has been filed in the wrong court. It is

Further Ordered that the motion to defer filing of certified index be dismissed as moot.

The Clerk is directed to withhold the issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

STATUTES RELATING TO JURISDICTION, JOINDER, AND DUE PROCESS

* * * *

28 U.S.C. §1331 Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

* * * *

28 U.S.C. §1332 Diversity of Citizenship

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000, exclusive of interest and costs, and is between---(1) citizens of different states...

* * * *

28 U.S.C. §1346 United States as Defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:.... (2)(b) Subject to the provisions of chapter 171 of this title, the district courts...shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred...

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

* * * *

28 U.S.C. §1355 Fine, penalty, or forfeiture

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress...

(b)(1) A forfeiture action or proceeding may be brought in---(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or (B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

* * * *

28 U.S.C. §1395 Fine, penalty, or forfeiture

(a) A civil proceeding for the recovery of a proceeding for the recovery of a pecuniary fine, penalty, or forfeiture may be prosecuted in the district where it accrues or the defendant is found...

* * * *

47 U.S.C. 401 Enforcement provisions

(a) Jurisdiction. The district courts of the United States shall have jurisdiction, upon application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this chapter by any person, to issue a writ or writs of mandamus commanding such person to comply with the provisions of this chapter.

(b) Section "b" not reprinted

(c) Upon the request of the Commission it shall be the duty of any United States attorney to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States.

* * * *

* * * *

47 U.S.C. §402 Judicial review of Commission's orders and decisions

(a) Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (B) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of title 28.

(b) Right to appeal. Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases: (1) By any applicant for a construction permit or station license, whose application is denied by the Commission. (2) By any applicant for the renewal or modification of any such instrument or authorization whose application is denied by the Commission. (3) By any party to an application for authority to transfer, assign, or dispose of any such instrument or authorization whose application is denied by the Commission. (4) By any applicant for the permit required by Section 325 of this title whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission. (5) By the holder of any construction permit or station license which has been modified or revoked by the Commission. (6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1) to (4) of this subsection...

* * * *

* * * *

47 U.S.C. §411 Joinder of parties

(a) In any proceeding for the enforcement of the provisions of this chapter, whether such proceedings be instituted before the Commission or begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

(b) In any suit for the enforcement of an order for the payment of money all parties in whose favor the Commission may have made an award for damages may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit, the recovery if any, may be by judgement in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

* * * *

47 U.S.C. §503 Forfeitures

...(a)(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for hearing before the Commission or an administrative law judge thereof in accordance with section 554 of Title 5. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a) of this title...

(B) If any person fails to pay an assessment or a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgement in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review...

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection of- (A) such person holds a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred- (1) more than 1 year prior to the date of the issuance of the required notice or notice of apparent liability...

* * * *

47 U.S.C. §504 Forfeitures

(a) Recovery The forfeitures provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: Provided, that any suit for the recovery of a forfeiture imposed pursuant to the provisions of this chapter shall be a trial de novo...

* * * *

5 U.S.C. Chapter 5 - Administrative Procedure

5 U.S.C §552

...(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records or situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo...

* * * *

5 U.S.C. §554 Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for agency hearing, except to the extent that there is involved- (1) a matter subject to a subsequent trial of the law and the facts de novo in a court;...

* * * *

5 U.S.C. §702 Right of review

A person suffering a legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof...

* * * *

5 U.S.C. §704 Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review...

* * * *

5 U.S.C. §706 Scope of Review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall...(2) hold unlawful and set aside agency action, findings, and conclusions found to be---

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of any agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

* * * *

TYPICAL STATE LONG ARM STATUTE

Act Submitting to Jurisdiction - Process

1). Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

a). The transaction of any business within this State;

b). The commission of a tortious act within this State;

c). The ownership, use, or possession of any real estate situated in this State;

d). Contracting to insure any person, property, or risk located within this State at the time of contracting;

e). With respects to actions of dissolution of marriage and legal separation, the maintenance in this State of a matrimonial domicile.

2). Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State...

* * * *

CONSTITUTIONAL PROVISIONS

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

* * * *

SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

* * * *

EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

* * * *

RELEVANT FEDERAL RULES OF CIVIL PROCEDURE

28 U.S.C. FEDERAL RULES OF CIVIL PROCEDURE

* * * *

Rule 4 Process

(j) Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

* * * *

Rule 11. Signing of Pleadings, Motions, and Other Papers: Sanctions (Pre-1994 version)

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper, and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney

or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

* * * *

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery methods...(1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or any tangible things and the identity and location of persons having knowledge of any discoverable matter...
(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows: (1) A party is under a duty seasonably to supplement the response with respect to any question addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony. (2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment...

(g)...Signing of Discovery Requests, Responses, and Objections....The signature of the attorney or party constitutes a certification (see, generally, Rule 11, supra). ...If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

* * * *

RULE 37 Failure to Make or Cooperate in Discovery; Sanctions

...(a)(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

* * * *

RULE 56 Summary Judgement

....(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgement is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

....(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.